

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Changes to Title 18. Public Revenue

Regulation 1584. *Membership Fees*.

A. Factual Basis

The State Board of Equalization (Board) originally adopted California Code of Regulations, title 18, section (Regulation) 1584, *Membership Fees*, in 1996 to prescribe the application of sales and use tax to membership fees retailers charge their customers to shop at membership club stores. As relevant here, Regulation 1584, subdivision (a)(1)(A) provides that “[m]embership fees related to the anticipated retail sale of tangible personal property are includible in taxable gross receipts when . . . the retailer sells its products only to members and the membership fee exceeds a nominal amount.” And, Regulation 1584, subdivision (b) defines the term “nominal amount.”

When Regulation 1584 was first adopted in 1996, subdivision (b) defined the term “nominal amount” to mean “an amount totaling \$40 or less per year.” However, subdivision (b) also provided and continues to provide that “during September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount.” Therefore, the Board subsequently amended the definition for the term “nominal amount,” pursuant to California Code of Regulations, title 1, section (Rule) 100, in 2000 and 2005 to provide that a nominal amount means an “amount totaling \$45 or less per year,” effective January 1, 2001, and a nominal amount means an “amount totaling \$50 or less per year,” effective January 1, 2006, respectively, due to increases in the CCPI.

During the most recent five-year period, the CCPI changed from 201.3 in June 2005 (the most recent computation year that resulted in an adjusted nominal amount) to 227.1 in June 2010 (the current computation year). The Board has determined that this change resulted in a 12.82 percent increase in the CCPI,¹ and that a 12.82 percent increase in the CCPI automatically results in a \$5 increase² in the current \$50 or less per year nominal amount, effective the following January 1, so that term nominal amount means an amount totaling “\$55 or less per year,” effective January 1, 2011. Therefore, the Board proposes to revise the first sentence in Regulation 1584, subdivision (b)(1) to provide that “beginning January 1, 2011, the term ‘nominal amount’ means an amount totaling \$55 or less per year, subject to increase as provided in subdivision (b)(2)” and add a new second sentence to subdivision (b)(1) to clarify that “For

¹ Note that 227.1 CCPI minus 201.3 CCPI equals 25.8 CCPI and 25.8 CCPI is 12.82 percent of 201.3 CCPI.

² Note that \$50 multiplied by 12.82 percent equals \$6.41, and that \$6.41 must be rounded down to \$5 per the formula in Regulation 1584, subdivision (b).

periods from January 1, 2006 through December 31, 2010, the term ‘nominal amount’ . . . means an amount totaling \$50 or less per year.” The Board also proposes to update the dates in the example set forth in the last two sentences in Regulation 1584, subdivision (b)(2), in order to provide guidance to the public and Board staff regarding the January 1, 2016, and January 1, 2021, nominal amount adjustment computations. The Board has determined that these changes are appropriate for processing under Rule 100 because they update the definition for the term “nominal amount” in Regulation 1584, subdivision (b)(1) in accordance with the regulation’s existing provisions and update the dates in the last two sentences of subdivision (b)(2) to make the example set forth therein applicable to the succeeding 2016 and 2021 nominal amount adjustment computations, and the changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

B. Proposed Change to Regulation 1584

Proposed change to Regulation 1584:

Regulation 1584. Membership Fees.

(a) Application of Tax.

(1) In General. . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(2) . . . (unchanged).

(3) Incidental Sales. . . . (unchanged).

(4) Consumer Cooperatives. . . . (unchanged).

(b) Nominal Amount.

(1) For purposes of this regulation, beginning January 1, ~~2011~~2006, the term “nominal amount” means an amount totaling ~~\$55~~50 or less per year subject to increase as provided in subdivision (b)(2). For periods from January 1, 2006 through December 31, 2010, the term “nominal amount” for purposes of this regulation means an amount totaling \$50 or less per year. For periods from January 1, 2001 through December 31, 2005, the term “nominal amount” for purposes of this regulation means an amount totaling \$45 or less per year. For periods prior to January 1, 2001, the term “nominal amount” for purposes of this regulation meant an amount totaling \$40 or less per year. Amounts received for memberships which are in conjunction with a basic membership (add-ons) are not considered a part of the basic membership fee in determining the nominal amount of the basic membership. Additional cards issued under the same membership number are sales of separate memberships.

(2) During September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5,

to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount. For example, for the January 1, ~~2016~~~~2014~~ adjustment computation, the CCPI index on June 30, ~~2015~~~~2010~~, will be compared with the CCPI index on June 30, ~~2010~~~~2005~~. If no adjustment is made at that time, the next comparison will be of the CCPI index on June 30, ~~2020~~~~2015~~ with the CCPI index on June 30, ~~2010~~~~2005~~.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011.1, 6012 and 6012.1, Revenue and Taxation Code.